

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.M.F. and A.R.M.,¹

Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No. 2:22-cv-1193

COMPLAINT

INTRODUCTION

1. In 2018, the United States implemented an unprecedented policy of intentionally separating asylum-seeking parents and children at the nation's southern border. While the policy was in effect, U.S. officials systematically and forcibly took children from their parents, causing extraordinary trauma to thousands of families. Plaintiffs became victims of this horrific policy when government officials ripped six-year-old A.R.M. away from her mother S.M.F. and sent her to an undisclosed location across the country. The mother and child were separated for over two months.

¹ Plaintiffs are concurrently filing a motion for leave to proceed under pseudonyms, in order to protect their identities from public disclosure and thereby to minimize the risk of compounding the trauma they have experienced as a result of Defendant's unlawful policy and actions. Plaintiffs have already disclosed their full names to the relevant government agencies in their administrative claims filed in accordance with 28 U.S.C. § 2675.

1 2. The trauma that Plaintiffs and other parents and children suffered was not an
2 incidental byproduct of the policy. It was the very point. The government *sought* to inflict
3 extreme emotional distress and other harms on migrant families by forcibly separating them, and
4 then to use that trauma and the media reporting regarding the separations to coerce arriving
5 immigrants into giving up on their asylum applications and to deter future asylum seekers.

6 3. Federal officials at the highest levels of government repeatedly made public
7 statements acknowledging that this was the policy's purpose. Despite widespread condemnation
8 and a federal-court injunction requiring the government to reunite separated families and to stop
9 further separations, former president Donald J. Trump defended the policy as a deterrent to
10 migration from Central America. Even months after a federal court had ordered an end to the
11 policy, the former president stated on Twitter: "if you don't separate, FAR more people will
12 come." Donald J. Trump (@realdonaldtrump), Twitter (Dec. 16, 2018, 11:25 a.m.),
13 <https://twitter.com/realDonaldTrump/status/1074339834351759363>
14 [[https://web.archive.org/web/20181218231233/https://twitter.com/realDonaldTrump/status/1074](https://web.archive.org/web/20181218231233/https://twitter.com/realDonaldTrump/status/1074339834351759363)
15 [339834351759363](https://web.archive.org/web/20181218231233/https://twitter.com/realDonaldTrump/status/1074339834351759363)].

16 4. Plaintiffs' claims concern the entirely predictable—and actually *intended*—harms
17 caused by Defendant's unprecedented policy and practice of systematically separating asylum-
18 seeking parents and children. Defendant's employees forcibly separated Plaintiffs after they
19 entered the United States in May 2018. They then detained Plaintiffs in separate facilities
20 thousands of miles apart, keeping S.M.F. in Texas while forcibly transferring A.R.M. to a facility
21 in New York. S.M.F. was unable to hold her daughter again until the end of July 2018—when
22 they were finally reunited in Seattle after more than two months of forced separation. It was only
23 then that she found out that A.R.M. had been detained across the country throughout that time.

12. Venue is proper in the Western District of Washington under 28 U.S.C. § 1402(b) because Plaintiffs reside in this District.

PARTIES

13. Plaintiff S.M.F. is a citizen of Honduras who resides in Seattle, Washington. Fearing persecution and torture, she fled Honduras with her daughter, A.R.M., and sought refuge in the United States.

14. Plaintiff A.R.M. is a citizen of Honduras who resides in Seattle, Washington. With her mother, S.M.F., A.R.M. fled persecution and torture in Honduras and sought refuge in the United States. A.R.M. was six years old at the time of the forced separation described in this Complaint, and was a minor at all times during which Defendant's employees detained her.

15. The United States of America has waived sovereign immunity as to claims brought under the FTCA, and is properly named as a defendant to each of Plaintiffs' claims under the Act. 28 U.S.C. § 2679(a).

FACTUAL ALLEGATIONS

Defendant's Employees Subjected Plaintiffs to Inhumane Detention Conditions and Forcibly Separated Them When They Entered the United States to Seek Asylum.

16. S.M.F. and A.R.M. are a mother and daughter who fled persecution and torture in Honduras to seek asylum in the United States.

17. Plaintiffs entered the United States on or about May 10, 2018, near El Paso, Texas. Shortly after they crossed the border, U.S. Customs and Border Protection (CBP) officers arrested and questioned Plaintiffs and the people with whom they were traveling, loaded them into a van, and transported them to a nearby detention center.

18. Immigration officers took Plaintiffs to a CBP facility known as the "*hielera*," or "ice box," because of its frigid temperatures. Once they arrived at the facility, a male CBP

1 officer ran a security wand over S.M.F.'s body, remarking that coming to the United States was
2 not good for her because of the "new law." Officers then placed S.M.F. in a separate room,
3 where a female officer told her to remove all her clothing except for her underwear and searched
4 her body with her hands. S.M.F. felt humiliated and degraded. The officer then confiscated her
5 belongings, including her bag, phone, identification, and her six-year-old daughter's asthma
6 inhaler.

7 19. S.M.F. and A.R.M. were initially detained together in the *hielera* for two nights.
8 Temperatures in the *hielera* were so cold that S.M.F. and other mothers had to crowd together to
9 keep the children warm. S.M.F. and A.R.M. were forced to sleep on a freezing cement floor with
10 only a single aluminum blanket, and with all the lights kept on. The mothers used toilet paper
11 from the bathroom to create makeshift pillows for their children.

12 20. The cold temperatures exacerbated A.R.M.'s asthma symptoms, so S.M.F. asked
13 the officers for the inhaler that had been confiscated earlier. The officers returned the inhaler but
14 did not offer any type of medical assistance despite A.R.M.'s noticeable coughing, as well as
15 allergic skin reactions related to her asthma. Indeed, no medical attention appeared to be
16 available at the *hielera*.

17 21. S.M.F. and A.R.M. were unable to shower or bathe because the *hielera* had no
18 running water, soap, or sanitizer. Each person at the *hielera* was provided one small burrito and
19 one small bottle of water three times a day. The meal was so small that most of the mothers gave
20 their food to their children. Those who requested additional food or water did not receive any.

21 22. At some point after entering the facility, S.M.F. was called to an officer's desk for
22 questioning. She left A.R.M. with the other mothers as she went inside, but A.R.M. could still
23 overhear the conversation between the officer and S.M.F. An officer who spoke Spanish told

1 S.M.F. that she would be separated from her daughter for the crime of having entered the country
2 illegally. When S.M.F. stated that she does not want to be separated from her daughter, the
3 officer told her that she could sign a document and be returned to her country. S.M.F. expressed
4 that she was afraid to return to Honduras, did not want to sign a document she did not
5 understand, and wanted to speak with a lawyer. The officer sent S.M.F. back into the cell.

6 23. When S.M.F. returned to the cell, A.R.M. asked her where she would be going.
7 S.M.F. tried to comfort A.R.M., but felt afraid. While in the cell, S.M.F. and A.R.M. regularly
8 witnessed officers entering the room, calling out a name, and taking children away from their
9 mothers. S.M.F. and A.R.M. watched and listened to the screams and cries of both mothers and
10 children as they were forcibly separated.

11 24. Early on the morning of May 13, 2018, officers called out S.M.F.'s name. When
12 she identified herself, an officer said to her, "You know what's coming. We're going to take
13 your daughter from you." S.M.F. felt a profound sense of fear, and A.R.M. began to cry. S.M.F.
14 told her daughter not to worry, and that they would soon be together again. S.M.F. and A.R.M.
15 clung to each other, not wanting to let go, but the officers eventually led A.R.M. away.

16 25. A woman who was introduced as a "social worker" arrived at the facility and told
17 S.M.F. to say goodbye to her daughter. S.M.F. asked where A.R.M. would be taken and for how
18 long, and the social worker responded that she did not know, and that she was only doing her
19 job.

20 26. Initially, A.R.M. was taken without her jacket and returned a few minutes later to
21 retrieve it. During her brief return, she told her mother that she would ask God for them to be
22 together again soon and gave her a tight hug. The social worker told them that A.R.M. had to
23 leave; as the six-year-old left her mother, she waved and blew kisses, walking down the hallway.

1 S.M.F. began to sob uncontrollably as soon as her daughter was out of her sight. She felt that she
2 had lost her child and did not know if she would ever see her again. No one ever told her where
3 A.R.M. was being taken.

4 27. S.M.F. and A.R.M. would not see each other again for more than two months.

5 28. The same day A.R.M. was forcibly taken from S.M.F., Defendant's employees
6 transported S.M.F. to a new detention facility.

7 29. At or around this same time that CBP separated S.M.F. and A.R.M. and moved
8 them to different facilities, Assistant United States Attorney Greg McDonald approved federal
9 prosecution of S.M.F. under 8 U.S.C. § 1325. This prosecution was approved pursuant to the
10 Department of Justice's new "Zero Tolerance" policy, as indicated by the Department of
11 Homeland Security (DHS)'s record of S.M.F.'s arrest on Form I-213, Record of
12 Deportable/Inadmissible Alien.

13 30. According to federal court documents from the Western District of Texas, a
14 criminal complaint for illegal entry in violation of 8 U.S.C. § 1325 was filed against S.M.F. on
15 May 14, 2018.

16 31. S.M.F. remained in federal criminal custody until her arraignment on May 30,
17 2018, where she pleaded guilty and was sentenced to time served. She was returned to
18 immigration custody immediately thereafter.

19 32. S.M.F.'s prosecution under 8 U.S.C. § 1325 was carried out pursuant to a policy
20 launched by the Department of Justice on April 6, 2018. That day, then-Attorney General
21 Jefferson Beauregard Sessions III publicly announced a new "Zero Tolerance" policy to all U.S.
22 Attorneys along the southern border, including in Texas, directing them to prosecute every adult
23 who committed the misdemeanor of unlawful entry or re-entry under 8 U.S.C. § 1325(a).

1 Previously, asylum seekers, especially families, had rarely been referred for prosecution under
2 this Section. *See, e.g.*, William A. Kandel, Cong. Rsch. Serv., R45266, The Trump
3 Administration’s “Zero Tolerance” Immigration Enforcement Policy 6 (2021).

4 33. The “Zero Tolerance” directive was conceived of and developed by Attorney
5 General Sessions, Secretary of Homeland Security Kirstjen Nielsen, White House Advisor
6 Stephen Miller, and others.

7 34. The policy was a pretext or cover for the federal government’s goal of carrying
8 out the widespread and systematic separations of Central American parents and children along
9 the southern border. Indeed, Defendant Nielsen later admitted under oath before the House
10 Homeland Security Committee that she had discussed imposing widespread family separations
11 with Sessions prior to the “Zero Tolerance” announcement. Several reports from Congress and
12 government agencies, including the Department of Justice’s Inspector General’s Office, have
13 since confirmed that the policy was intended to separate families and to deter asylum seekers.
14 *See, e.g.*, Dep’t of Justice, Off. of Inspector Gen., No. 21-028, Review of the Dep’t of Justice’s
15 Planning and Implementation of Its Zero Tolerance Policy (2021); Majority Staff of H. Comm.
16 on the Judiciary, 116 Cong., The Trump Administration’s Family Separation Policy: Trauma,
17 Destruction, and Chaos (Comm. Print 2020); *see also* Caitlin Dickerson, “An American
18 Catastrophe: The Secret History of the U.S. Government’s Family Separation Policy,” *The*
19 *Atlantic* (Aug. 7, 2022).

20 35. After the announcement of the “Zero Tolerance” policy, a parent who entered the
21 U.S. without inspection would typically be prosecuted under 8 U.S.C. § 1325, but receive a
22 sentence of time served. In the brief time the parent was held in federal pre-trial custody, the
23 child would be taken away, often flown across the country, and not returned to the parent even

1 after the parent was returned to immigration custody. Or, in other cases, the child would be
2 forcibly taken away while the parent was still in immigration custody.

3 36. As with most Zero Tolerance prosecutions under 8 U.S.C. § 1325(a)(1), S.M.F.
4 was sentenced to time served. Following her sentencing, S.M.F. was returned to immigration
5 custody.

6 37. Even though S.M.F. was in federal pre-trial criminal custody for only a brief time,
7 Defendant's employees used S.M.F.'s federal court proceedings and prison sentence to designate
8 A.R.M. an "unaccompanied minor." *See* 8 U.S.C. § 1232(b)(1); 6 U.S.C. § 279(b). Specifically,
9 once the Department of Justice initiated the criminal case against S.M.F., Defendant's employees
10 used the process that followed, including her required court hearings and her placement in
11 federal pre-trial criminal custody, to render A.R.M. "unaccompanied." Defendant's employees
12 continued that designation for weeks *after* S.M.F. was sentenced to time served and her case
13 completed, even though there was no longer any basis to consider A.R.M. unaccompanied.

14 38. As a result of the "unaccompanied minor" designation, CBP and U.S.
15 Immigration and Customs Enforcement (ICE) determined A.R.M. to be legally in the custody of
16 the Department of Health and Human Services' Office of Refugee Resettlement (ORR). *See* 8
17 U.S.C. § 1232(b); 6 U.S.C. § 279. ICE and CBP made that determination even though S.M.F.
18 and A.R.M. entered the country and were arrested and placed in immigration custody *together*,
19 and S.M.F. was in federal pre-trial criminal custody for only a brief time.

20 **Defendant's Employees Subjected S.M.F. to Inhumane Detention Conditions and Severe**
21 **Emotional Distress.**

22 39. For nearly one month after entering the United States and being forcibly separated
23 from her daughter, S.M.F. was detained in various Texas facilities under harsh conditions. At
one facility, S.M.F. and many other women had to sit on the floor because they were held in a

1 large room with only two benches in it. S.M.F. was also forced to sleep on the floor, on thin mats
2 with no blankets. As in the first *hielera*, temperatures were freezing, and the lights were left on
3 all night.

4 40. Each time S.M.F. was transferred between facilities, she was shackled to other
5 women in lines, with their hands bound together to their waists and their ankles bound tightly.

6 41. Throughout her month in detention, Defendant's employees refused to inform
7 S.M.F. of A.R.M.'s location, and they refused to facilitate any direct communication with her
8 daughter. Even though S.M.F. continuously asked the officers in detention, they refused to
9 provide any information about A.R.M. or the reunification process, exacerbating her concern
10 over her daughter's safety and wellbeing. The officers consistently responded that they could not
11 provide her with any information about her daughter or when she would see her again.

12 42. S.M.F. spent many nights crying while in detention. She suffered overwhelming
13 anxiety and distress as a result of being denied any information regarding A.R.M.'s whereabouts
14 or whether and when they would be reunited. On some days, she felt so desperate that she felt
15 that she did not want to live any more. She feared that she would never be able to see her
16 daughter again.

17 43. S.M.F. also grew concerned because she saw women being removed from the
18 United States without their children. At some point during her detention, an officer told her that
19 she should sign documents agreeing to her removal and that her daughter would be returned to
20 her after her deportation. S.M.F. refused to do so.

21 44. Defendant's employees' chaotic launch of the Zero Tolerance policy, as well as
22 their failure to provide even the most basic safeguards when launching the policy, caused and
23

1 worsened S.M.F.'s and A.R.M.'s difficulties in connecting and reuniting, even after S.M.F.'s
2 release from immigration custody.

3 45. As reports from Congress, the Department of Justice's Inspector General, and the
4 Government Accountability Office have explained, Defendant's employees failed to adequately
5 track separated family members. Defendant's employees also failed to provide the Office of
6 Refugee Resettlement with notice that DHS would dramatically expand the number of
7 "unaccompanied" child referrals, thereby overwhelming ORR's capacity to deal with cries for
8 help from parents like S.M.F. who anguished over the location of their separated children. Nor
9 did ORR take significant steps to prepare for the dramatic expansion of "unaccompanied"
10 children. *See, e.g.*, Dep't of Justice, Off. of Inspector Gen., No. 21-028, Review of the Dep't of
11 Justice's Planning and Implementation of its Zero Tolerance Policy and Its Coordination with the
12 Departments of Homeland Security and Health and Human Services (Jan. 2021); Majority Staff
13 of H. Comm. on the Judiciary, 116th Cong., Rep. on the Trump Administration's Family
14 Separation Policy: Trauma, Destruction, and Chaos (Comm. Print 2020); U.S. Gov't
15 Accountability Off., GAO-19-163, Unaccompanied Children: Agency Efforts to Reunify
16 Children from Parents at the Border (2018); *see also* Dickerson, *supra* p. 8.

17 46. Such failures predictably caused significant harm to both children and parents,
18 including S.M.F. and A.R.M., as they were unable to contact one another or even learn the most
19 basic information about the other's whereabouts, safety, and health.

20 47. On or around June 2, 2018, while she was still detained, S.R.M. was brought to a
21 large room with about 100 other people and bunkbeds. That day, S.R.M. was able to contact her
22 husband for the first time since she had entered the United States nearly a month ago. Her
23 husband, who had remained in Honduras, informed S.R.M. that he had been able to

1 communicate with A.R.M. at the end of May for the first time. He stated that the call was a very
2 short video call that consisted mostly of saying only hello and goodbye. A.R.M. cried profusely
3 on that call.

4 48. On June 8, 2018, S.M.F. was released from detention. Before being released,
5 S.M.F. asked officers for help with how to find information about her daughter, but they
6 responded that they did not have any information, only providing a document with contact
7 information for various shelters.

8 49. S.M.F. traveled on a bus for around three days and arrived at a family member's
9 home in Washington State. From her new home in Washington State, S.M.F. contacted her
10 husband, who, as noted above, was still in Honduras at the time. Her husband had learned that
11 A.R.M. was staying at a shelter in New York and had managed to speak with a social worker, but
12 he did not have any other information regarding A.R.M.'s location.

13 50. Shortly after arriving in Washington, S.M.F. called the social worker that her
14 husband had spoken with. The social worker told S.M.F. that A.R.M. was in New York with
15 "substitute parents," but provided no other information. Further, the agency with whom A.R.M.
16 had been forcibly placed only allowed only short, monitored video calls approximately once a
17 week.

18 51. During these monitored calls, S.M.F. had the sense that there was someone next
19 to A.R.M., preventing her from speaking freely.

20 52. When S.M.F. asked her daughter where she was, a social worker interrupted and
21 told S.M.F. that they could not share information about A.R.M.'s location or the "substitute
22 parents" because that information was confidential.

53. During these video calls, S.M.F. noticed that her daughter looked very thin and unwell. A.R.M. was also reserved and distant, completely different from her regular, gregarious personality. When S.M.F. asked her whether she was doing well, A.R.M. appeared to look up off camera and to another person, and would then refuse to answer the question.

54. Before reuniting S.M.F. with her daughter, she was subjected her to a lengthy process of gathering and submitting documentation to prove her relationship with and her daughter, even though they were well aware of S.M.F. and A.R.M.'s relationship. Sometimes, the social worker would reject documents that S.M.F. provided as being incorrect without explaining what needed to be fixed, further prolonging the release request.

55. Finally, in July 2018, A.R.M. was released to S.M.F. It was only then that S.M.F. learned that her daughter had been held at a shelter operated by Cayuga Centers.

Defendant's Employees Inflicted Lasting Psychological and Emotional Damage to A.R.M. and Put Her at Physical Risk.

56. After being forcibly separated from her mother in May 2018, A.R.M. was taken to another detention facility in Texas, where she was placed in a cell with around five other girls. The cell was always kept locked. A.R.M. asked the officers at the facility when her mother would come back, and they told her that she would be back the next day. A.R.M. felt angry and sad when S.M.F. did not appear the following day.

57. Within a few days, A.R.M. was taken to a transitional shelter operated by Cayuga Centers in New York. A.R.M. was introduced to three other children and one adult woman who A.R.M. was told was her temporary mother.

58. Cayuga Centers is a non-profit organization that contracts with the Office of Refugee Resettlement (ORR) to provide services to unaccompanied immigrant children.

1 59. Because DHS and ICE designated A.R.M. an unaccompanied minor, ORR was
2 charged by law with “coordinating and implementing the care and placement” of A.R.M..
3 6 U.S.C. § 279(b)(1); *see also* 8 U.S.C. § 1232(b)(1) (“[T]he care and custody of all
4 unaccompanied [noncitizen] children . . . shall be the responsibility of the Secretary of Health
5 and Human Services.”). ORR thus remained legally responsible for A.R.M.’s adequate care and
6 safety after it placed her in Cayuga Centers’ care.

7 60. The shelter conducted blood tests and administered vaccines to A.R.M. without
8 S.M.F.’s knowledge, much less consent. When S.M.F. later learned of this, she was alarmed and
9 disturbed that the center had administered vaccines without any record of A.R.M.’s medical
10 history or knowledge of allergies to medication. Indeed, the initial medical exam form for
11 A.R.M. —later obtained by her immigration counsel—demonstrates that no ORR or Cayuga
12 Centers personnel flagged A.R.M.’s prior diagnosis of and treatment for asthma.

13 61. The first time S.M.F. spoke to anyone about A.R.M.’s medical history was around
14 six weeks after their separation. In June 2018, when S.M.F. was scheduled to have her second
15 phone call with A.R.M., the social worker told her that A.R.M. could not be on the video call
16 because she was sick with a fever. When S.M.F. asked whether A.R.M. had been taking her
17 asthma medication, referring to the albuterol inhaler, the social worker asked what medication
18 A.R.M. should have been taking. Even after that phone call, no one ever informed S.M.F. about
19 whether her daughter was ever provided with proper medical attention for her asthma after their
20 separation. S.M.F. felt very concerned, as she knew that A.R.M. had a cough when they were
21 separated and that she had needed her inhaler throughout their travel from Honduras and during
22 their time in the *hielera*. She felt powerless and hopeless because she was unable to care for her
23 daughter.

1 62. S.M.F. found out about much of A.R.M.'s experiences at the shelter only after
2 they were reunited in July 2018.

3 63. ORR failed to provide A.R.M. with proper nutrition and sanitation. When S.M.F.
4 met A.R.M. at the airport in Seattle, she noticed that A.R.M. had lost a significant amount of
5 body weight and that her head was inundated with lice. It took S.M.F. nearly one month to
6 completely treat the head lice. For many weeks after that, there were sores on A.R.M.'s head
7 from the lice.

8 64. A.R.M. recounted to S.M.F. that during her forced separation from S.M.F., she
9 sometimes slept in the same bed as other children and was forced to get up early in the mornings.
10 She also recalled that she and other children were scolded if they cried.

11 65. A.R.M. was also told by Cayuga Centers staff that her mother had abandoned her
12 permanently. She felt afraid that she would never see her mother again. Later, when she was
13 reunited with S.M.F., she repeated multiple times something she had been taught while separated
14 from her mother: "It's true what they told me. You are bad for my life. You brought me here just
15 to leave me and make me suffer."

16 66. After being reunited, A.R.M. was emotionally distant from her mother and
17 unaffectionate for months. She often became angry at S.M.F. and told her she did not want to be
18 with her anymore. A.R.M. also had frequent nightmares from which she woke up screaming,
19 "Mommy don't leave me!"

20 67. To this day, A.R.M. still fears being separated from her mother. Any time that
21 S.M.F. is not with her, A.R.M. is vigilant and worried, and calls frequently to check where she is
22 and if anything happened to her. Every few days, A.R.M. goes to her mother's bed to sleep
23

1 during the night because she is afraid of being alone. She also frequently sleeps with her sibling
2 to escape feeling alone.

3 68. A.R.M. continues to exhibit other symptoms of emotional trauma. Her teachers
4 have told S.M.F. that she is not paying attention in school. On multiple occasions, A.R.M. has
5 told her parents that when she looks at a mirror that reflects her parent's bedroom, she sees a
6 woman hanging from the ceiling over her parents' bed. S.M.F. has found notes written by
7 A.R.M. saying that she is not well and telling her family goodbye.

8 **Defendant's Conduct Harmed Plaintiffs.**

9 69. The harm described above was one of the key purposes and desired outcomes of
10 Defendant's employees' actions. Defendant's employees intended to wreak physical, emotional,
11 and mental havoc on S.F.M., A.R.M., and others like them. They succeeded in doing so, causing
12 lasting emotional harm that will remain with S.F.M. and A.R.M.

13 70. Defendant's employees caused Plaintiffs to suffer significant physical, emotional,
14 and mental harm in several different ways.

15 71. Federal immigration officers subjected S.M.F. and A.R.M. to harsh and cruel
16 conditions in an *hielera*, forcibly separated them, and prolonged their detention. In doing so, the
17 U.S. government unlawfully punished S.M.F. and A.R.M. for seeking asylum in the United
18 States—which is statutorily obligated to adjudicate their claims for protection.

19 72. Federal immigration officers further inflicted severe emotional distress on S.M.F.
20 and A.R.M. by separating them from one another without any process, explanation, or
21 information. The two-month-long separation was part of an unprecedented government practice
22 and policy of forced family separation, which was specifically intended to inflict harm on
23 Plaintiffs in callous disregard of their legal rights, personal dignity, and family integrity.

73. As described above, inflicting severe emotional distress on Plaintiffs and other separated families and children was the very point of the Zero Tolerance policy. Defendant's employees knew very well that such separation would cause significant and lasting trauma. Indeed, prior to implementing the policy, a DHS Advisory Panel, ORR officials, and outside medical professionals warned DHS that implementing a family separation policy would cause catastrophic emotional and psychological harm to separated children and their parents. *See, e.g.*, U.S. Immigr. & Customs Enf't, Dep't of Homeland Sec., Report of the DHS Advisory Committee on Family Residential Centers (Sept. 30, 2016); Jeremy Stahl, *The Trump Administration Was Warned Separation Would Be Horrific for Children, Did It Anyway*, Slate, July 31, 2018, <https://slate.com/news-and-politics/2018/07/the-trump-administration-was-warned-separation-would-be-horrific-for-children.html>; Fernando Stein & Karen Remley, Am. Acad. Of Pediatrics, *AAP Statement Opposing Separation of Mothers and Children at the Border* (Mar. 4, 2017), <https://www.aap.org/en/news-room/news-releases/pediatrics2/2017/immigrantmotherschildrenseparationv/>.

74. Defendant's employees acted in blatant disregard of these warnings when they separated S.M.F. and A.R.M. for several weeks.

75. S.M.F. experienced severe distress, depression, and anxiety while separated from her young daughter over two months.

76. A.R.M. experienced lasting emotional distress and trauma as a result of being forcibly separated from her mother for more than two months when she was only six years old.

77. ORR failed to provide A.R.M. with adequate care and safety by placing her in a shelter without a full understanding of her medical history, subjecting her to vaccination without parental consent, and failing to ensure proper food and sanitation.

1 78. As a result of ORR's actions, A.R.M. suffered risks and actual harms to her
2 physical and mental health.

3 79. Both S.M.F. and A.R.M. continue to suffer significant emotional and mental
4 trauma because of Defendant's employees' actions.

5 80. These harms were not only foreseeable, but also intended.

6 81. Defendant is therefore liable to Plaintiffs under the FTCA and relevant state laws.

7 **CLAIMS FOR RELIEF**

8 **I. Intentional Infliction of Emotional Distress**

9 82. All the foregoing allegations are repeated and realleged as though fully set forth
10 herein.

11 83. Defendant's employees acted intentionally and/or recklessly through their
12 implementation of an unprecedented government policy of forcibly separating migrant parents
13 and children.

14 84. Defendant's employees engaged in conduct that was extreme and outrageous.

15 85. Defendant's employees engaged in conduct that caused Plaintiffs severe
16 emotional distress.

17 86. Under the FTCA, Defendant is liable to Plaintiffs for intentional infliction of
18 emotional distress.

II. Abuse of Process

87. All the foregoing allegations are repeated and realleged as though fully set forth herein.

88. Defendant's employees abused legal processes within their control when, after initiating a prosecution against S.M.F. under 8 U.S.C. § 1325, they used the resulting legal proceedings to designate A.R.M. an unaccompanied minor.

89. Defendant's employees improperly made the unaccompanied minor designation, relying on the legal proceedings following the start of S.M.F.'s prosecution to justify the separation of S.M.F. and A.R.M. and to traumatize them.

90. Even if a temporary separation was legally justified during S.M.F.'s brief time in federal pre-trial criminal custody, any basis to designate A.R.M. as an unaccompanied minor evaporated after S.M.F. was sentenced to time served on May 30, 2018. Defendant's employees nevertheless continued to force separation between S.M.F. and A.R.M. for weeks.

91. Defendant's employees' abuse of process caused Plaintiffs severe, lasting harm, including emotional distress.

92. Under the FTCA, Defendant is liable to Plaintiffs for abuse of process.

III. Wrongful Child Abduction

93. All the foregoing allegations are repeated and realleged as though fully set forth herein.

94. S.M.F. was legally entitled to A.R.M.'s custody at all times relevant to this action, except during the brief time she served in federal pre-trial criminal custody.

95. Defendant's employees, with knowledge that S.M.F. did not consent, compelled her minor child A.R.M. to leave her.

1 96. Defendant's employees, with knowledge that S.M.F. did not consent, compelled
2 her minor child A.R.M. not to return to S.M.F.

3 97. Defendant's employees actively concealed the A.R.M.'s location from S.M.F.
4 even after S.M.F. was returned to immigration custody upon completing her sentence for time
5 served.

6 98. Defendant's interference with S.M.F.'s custody of A.R.M. caused Plaintiffs
7 severe, lasting harm, including emotional distress.

8 99. Under the FTCA, Defendant is liable to Plaintiffs for wrongful child abduction.

9 **IV. Negligence – A.R.M.'s Treatment in ORR Custody**

10 100. All the foregoing allegations are repeated and realleged as though fully set forth
11 herein.

12 101. Defendant's agents had a duty to Plaintiff A.R.M. to act with ordinary care and
13 prudence so as not to cause harm or injury to her while she was held at Cayuga Centers under
14 ORR custody.

15 102. Defendant's agents failed to act with ordinary care and breached their duty of
16 care owed to Plaintiff A.R.M. As a direct and proximate result of the conduct described in this
17 Complaint, A.R.M. suffered substantial damages.

18 103. Under the FTCA, Defendant is liable to Plaintiff A.R.M. for negligence.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray for judgment as follows:

- 21 a. Compensatory damages in the amount of \$3,000,000 for harm to S.M.F. resulting
22 from Defendant's conduct;

- 1 b. Compensatory damages in the amount of \$3,000,000 for harm to A.R.M. resulting
2 from Defendant's conduct; and
- 3 c. Such other and further relief as the Court deems just and appropriate, including all
4 equitable relief to which Plaintiffs are entitled.

5 Dated: August 25, 2022.

Respectfully submitted,

6 s/ Matt Adams

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**petition for admission forthcoming*

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